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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 12th June 2025

S.R.O. No. 332/2025—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Award, dated the 3rd May 2025 in the I.D. Case No. 36 of 2019 passed by the Presiding Officer, Industrial Tribunal, Bhubaneswar on the Industrial Dispute between the management of IL & FS Education & Technology Services Ltd., At GA-232, Kailash Vihar, Sailashree Vihar, Chandrasekharpur, Bhubaneswar and 1. S/Shri Debasish Otta, S/o Late Prabhat Kumar Otta, C/o P.S. Otta, Near Bagha Ghara, Bhanjapur, Ward No.18, Baripada, Dist. Mayurbhanj, 2. Harekrushna Dandapat, S/o Nalin Kumar Dandapat, At Kanjia, P.O. Sansarasaposi, Via Kuliana, Dist. Mayurbhanj, 3. Kallol Kumar Singh, S/o Kshetra Mohan Singh, At Chadheigan, Via Kosta, Dist. Mayurbhanj, 4. Aniruddha Mohanta, S/o Late Dullal Ch. Mohanta, At Barjupur, P.O. Damodarpur, Via Takatpur, Baripada, Dist. Mayurbhanj is hereby published as in the schedule below :—

SCHEDULE

BEFORE THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 36 of 2019

Dated the 3rd May 2025

Present :

Shri Benudhar Patra, LL.M.,
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Between :

The Management of IL & FS Education
& Technology Services Ltd.,
At GA-232, Kailash Vihar,
Sailashree Vihar, Chandrasekharpur,
Bhubaneswar.

. . First Party—Management.

And

- (1) S/Shri Debasish Otta, . . . Second Party—Workman.
S/o Late Prabhat Kumar Otta,
C/o P.S. Otta, Near Bagha Ghara, Bhanjapur,
Ward No.18, Baripada, Dist. Mayurbhanj.
(2) Harekrushna Dandapat, S/o Nalin Kumar Dandapat,
At Kanjia, P.O. Sansardasaposi, Via Kuliana,
Dist. Mayurbhanj.
(3) Kallol Kumar Singh, S/o Kshetra Mohan Singh,
At Chadheigan, Via Kosta,
Dist. Mayurbhanj.
(4) Aniruddha Mohanta, S/o Late Dullal Ch. Mohanta,
At Barjupur, P.O. Damodarpur, Via Takatpur, Baripada,
Dist. Mayurbhanj.

Appearances :

Shri Debi Prasad Sahu, Adv.	: For the First—Party
Shri Trilochan Lenka, Adv.	: For the Second—Parties

AWARD

The Government of Odisha in the Labour & E.S.I. Department, in exercise of powers conferred upon it by sub-section (5) of Section 12 readwith Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short ' the Act') have referred the following schedule of dispute for adjudication by this Tribunal vide Order No. IR (I.D.)-41/12/4896/LESI, dated the 25th June 2012 :—

Schedule

“whether the action of the management of M/s IL & FS Education & Technology Servies Ltd. at 3rd Floor, NTBCL, Building, Toll Plaza, DND Fly Over, Noida (UP) having their office at GA-232, Kailash Vihar, Sailashree Vihar, Chandrasekharapur, Bhubaneswar in terminating the servies of School Co-ordinators, namely Shri Debasish Otta, Shri Harekrushna Dandapat, Shri Kallol Kumar Singh and Shri Aniruddha Mohanta with effect from the 10th January 2016 is legal and /or justified ? If not to what relief are these workmen entitled to ?”

2. The factual matrix of the dispute as culled out from the conciliation failure report is that on a complaint being rasied by the second party members on the 8th March 2016 stating that despite their rendering continuous service under the first party for more than one and half years they have been terminated from employment with effect from the 10th January 2016 and in their place new hands were picked up, the Conciliation Officer-*cum*-District Labour Officer, Mayurbhanj initiated a conciliation proceeding, but as the parties remained firm in their respective view the conciliation ended in a failure, which culminated into the present reference.

3. Pursuant to the reference, all the second party members filled a joint claim statement stating therein, *inter alia*, that they all joined under the first party as School Co-ordinator-*cum*-Computer Operators on the 2nd April 2014, except Shri Harekrushna Dandapat, who joined as such on the 21st August 2014 and were assigned with duties in different Government Schools in the district of Mayurbhanj where they continued till, dated the 9th January 2016, despite

the fact that they were not being paid their salary regularly. It is alleged that although they were covered under the E.S.I. and E.P.F. Schemes contributions were being deducted from their salary towards the E.S.I. and E.P.F., yet the same were not deposited by the first party before the concerned authorities, for which after several demand when the first party paid a deaf ear to their grievance, all of them along with other workers went on a strike on the 16th November 2015. It is further alleged that as a consequence of strike for fulfilment of their demand the first party bore grudge against the second party members and ultimately on the 10th January 2016 when they went to perform their respective duty they were denied employment and were told that their services have been terminated.

According to the second party members, they were responsible for computer education of students, maintenance of the hardware, software and accessories at the School and they used to provide assistance to the teachers in the matter of use of IT infrastructure and thus they are 'workmen' within the meaning of Section 2(s) of the Act and so also the first party is an 'industry' within the meaning of Section 2(j) of the Act, besides the refusal of their employment constitutes an 'industrial dispute' within the meaning of the Act. It has been specifically averred in the claim statement that their refusal of employment/termination was neither preceded with any departmental action nor they were served with any notice or in lieu thereof notice pay and compensation which is a mandatory requirement for their rendering continuous service for more than 240 days under the first party. It has also been alleged by the second party members that at the time of their refusal of employment the first party in gross violation of the provisions of the Act allowed junior workers to continue in employment and so also after their termination engaged new persons to perform the duties of the second party members. In the background, as above, the second party members have prayed for their reinstatement in services with full back wages, continuity of service; as they have not been gainfully employed elsewhere and are facing a lot of financial problem to maintain themselves as well as their family members.

4. The first party management entered contest in dispute and filed its written statement stating, *inter alia*, that the disputants involved herein being not "Workmen" and so also the first party not an "Industry" within the meaning of the Act, the reference as laid is not maintainable. Elaborating the stand, it is asserted in the written statement that the disputants during the tenure of employment were assigned with duties for imparting computer education to students as well as the teachers of the Schools and as per the settled principles of law the "teachers" being not covered under the definition of "workmen" as prescribed under Section 2 (s) of the Act, the dispute can no way be held to be maintainable. With regard to the stand of the first party that its establishment does not fall under the definition of an "industry", it is averred that consequent upon its selection as the successful tenderer and letter of Award, dated the 12th September 2013 of Orissa Knowledge Corporation Limited (OKCL) to implement the project under built, own operate and transfer (BOOT) model for a total No. of 3409 Schools in the State of Odisha for five years, there are requirement of school co-ordinators besides other staffs for deployment by the first party management and accordingly the management started the recruitment process. The objective of the first party management is to make an learning an experience-led, interactive, insight-based and stimulating journey and it has designed wide range of products for children and adults to provide learners with a rich, multi sensorial experience in learning including scientific and creative mixed of innovative hardware, technology based instructional materials, workshops, teacher training, printed content and material that incorporates video, audio and multimedia technology. With the above aim and objectives, it is asserted, there is reason to state that the activities of the first party are coming within the purview of "industry".

As regards the merit of the claim, the first party while admitting the employment of the disputants as School co-ordinators in the district of Mayurbhanj, has taken a definite stand that their employment for a fixed period of employment i.e. for a period of 11 months subject to renewal basing upon their performance and further their appointment as such was governed purely by the contract between the company and the School co-ordinators. It is stated that as per of the terms of the appointment letters, the disputants were allowed to avail maximum of one day leave in a month with prior permission of concern Head Master of the School and their immediate supervisors. It is stated that when the disputants were being continued under the employment with the above stipulations, during the first week of the November 2015 few School co-ordinators remained on unauthorised leave and started misleading others even they went to the extent of damaging the property of the first party for which FIR was lodged against the erring employees and after protracted counselling and issuance of show cause for such misdemeanour though most of the School co-ordinators resumed their work, yet 949 Nos. of School co-ordinators (including the present disputants) did not resume their job and continued to remain absent unauthorisedly, even though they had submitted their show cause reply through E-mail. It is stated that as during the academic year the students enrolled in the Schools suffered adversely due to the unauthorised absence of the School co-ordinators, the first party was left with no other option than to terminate the services of the disputants and to appoint School co-ordinators through transparent online process to fill up the vacancies. In the aforesid background it is averred in the written statement that the contravention of the provisions of the Act by the first party as alleged by the disputants is not tenable, accordingly the first party has prayed to answer the reference in the negative as against the disputants.

5. From the pleadings of the parties, as discussed above, the following issues emerge for consideration :—

ISSUES

- (i) Whether the case is maintainable ?
- (ii) Whether Shri Debasish Otta, Shri Harekrushna Dandapat, Shri Kallol Kumar Singh and Shri Aniruddha Mohanty are workmen as defined under Section 2(S) of the I.D. Act, 1947 ?
- (iii) Whether the action of the management of M/s IL & FS Education & Technology Services Ltd. 3rd Floor, NTBCL, Building, Toll Plaza, DND Fly Over, Noida (UP) having their office at GA-232, Kailash Vihar, Sailashree Vihar, Chandrasekharpur, Bhubaneswar in terminating the services of School Co-ordinators, namely Shri Debasish Otta, Shri Harekrushna Dandapat, Shri Kallol Kumar Singh and Shri Aniruddha Mohanta with effect from the 10th January 2016 is legal and/or justified ?
- (iv) If not, what relief these workmen are entitled to ?

5. In order the substantiate their respective stand, while the second party examined one of its disputants namely, Shri Debasish Otta as WW 1 and relied on xerox copies of some documents marked Ext. 1 to 12, the first party also examined one witness on its behalf, who is the Assistant vice President and Regional Head of the first party, and placed reliance on Xerox copies of certain documents marked Ext. A to W.

FINDINGS

7. *Issue Nos. (i & ii)* The findings on both the issues being interlinked with each other the same are taken up for consideration simultaneously for the sake of convenience. On the question of maintainability of the reference, the first party has taken a stand that the disputants are not workmen. It being one of the grounds touching the maintainability issue I would like to delve into such question first.

Before discussing the evidence available on record, it would be apt to have a glimpse over the definition of “workmen” as assigned in the Act. Section 2 (s) of the Act defines workmen as follows :—

“workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute, or whose dismissal discharge or retrenchment has led to that dispute, but does not include any such person :—

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957) ; or
- (ii) who is employed in the police service or as an officer or other employee of a prison, or
- (iii) who is employed mainly in a managerial or administrative capacity, or
- (iv) who being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

The definition of ‘workman’ as gives under Section 2(s) of the Act came up for consideration before the Hon’ble Apex Court in the case of S.K. Maini Vs. M/s Carona Sahu Company Limited and others (1994) 3 SCC 510 and emphasising on the legislative intention behind the definition of ‘workman’, the Hon’ble Apex Court have made the following observations at Para. 9 of the judgment :—

“9 After giving our careful consideration to the facts and circumstances of the case and the submissions made by the learned counsel for the parties, it appears to us that whether or not an employee is a workman under Section 2(s) of the Industrial Disputes Act is required to be determined with reference to his principal nature of duties and functions. Such question is required to be determined with reference to the facts and circumstances of the case and materials on record and it is not possible to lay down any strait-jacket formula which can decide the dispute as to the real nature of duties and functions being performed by an employee in all cases. When an employee is employed to do the types of work enumerated in the definition of workman under Section 2(s), there is hardly any difficulty in treating him as workman under the appropriate classification but in the complexity of industrial or commerical organizations quite a large number of employees are often required to

do more than one kind of work. In such cases, it becomes necessary to determine under which classification the employee will fall for the purpose of deciding whether he comes within the definition of workman or goes out of it.

8. Keeping in view the guidelines of the Hon'ble Apex Court and the provisions of the Act, now it is to be scrutinised on the basis of evidence available on record as to nature of duties of the second party members in order to arrive at a conclusion on the point. In order to substantiate their stand that all the second party members are coming within the definition of 'workmen', WW 1 has stated in his examination in chief that the second party members were appointed as School Co-ordinators-cum-Computer Operators and by virtue of their continuing as such they were covered under the E.P.F. and E.S.I. Schemes and therefore, They come under the definition of 'workmen'. In Para. 3, however, he has stated that the members of the second party were responsible for computer education of students; for maintenance of the hardware, software and accessories at the School and they were required to provide assistance to the Teachers in use of I.T infrastructure. In that context, he proved Exts. 1 to 4, the copy of their appointment letters as School Co-ordinators and Annexures-A thereof (enclosed to each of the documents marked Exts. 1 to 4) disclose the nature of duties assigned to the second party members. It has been elicited from his cross-examination that the second party members were imparting refresher training to the concerned subject teachers and they were ensuring responsibilities assigned under Clause 5 of the heading "Roles and Responsibilities of Exts.1 to 4. Nothing reveals from his evidence, nor is any document produced on behalf of the second party members showing them to have worked under the first party as Computer Operators. Clause 3, 4 and 5 of the Annexures to Exts.1 and 4 are suggestive of the main roles and responsibilities of the second party members which includes their real nature of duties, such as to impart training to the students and teachers on IT skills as per the school syllabus and time table; to ensure regular refresher training to the concerned teachers and to ensure that all the nominated teachers in each school have been trained to use ICT Labs and relevant departmental software. The roles and responsibilities assigned on the School Co-ordinators, as deposed to by WW 1, coupled with the documentary evidence, as discussed above, leaves no room for doubt that the members of the second party are coming within the purview of 'teachers'. It being the settled principles of law that imparting of education cannot be considered as skilled or unskilled; manual or supervisory, or technical or clerical work owing to the fact that they educate the children, moulds their character, builds up their personality and makes them fit to become responsible citizens, the clerical works, if any, they may do, is only incidental to their principal work of teaching, this Tribunal while upholding the argument advanced on behalf of the first party answers the issues in the negative as against the second party members.

9. *Issue Nos. (iii & iv)*—In view of the discussions held under Issue Nos. (i) and (ii), analysis on Issue Nos. (iii) & (iv) becomes academic. The undisputed facts, as culled out from the materials available on record, reveal that all the second party members were appointed as School Co-ordinators under fixed period of contract for implementation of the ICT Schemes in allotted Schools across the State of Odisha with certain terms and conditions. It is also not disputed that during their continuance the second party members staged a strike on the 16th November 2015 and after issuance of show cause notices services of the second party members were terminated

resorting to Clause 20 of the appointment letters, which envisages that in case of non-performance and indiscipline during the period of the agreement the company reserves the right to terminate their contract without serving any notice. Staging strike, continuance of the same and allowing Union to form amongst teachers as in the present case, in my view, was nothing but an act to create friction in the society leading to a great loss to the students, accordingly on merit also, the second party members have failed to substantiate their claim to be either legal or justified and thereby their entitlements to the relief (s) claimed.

The issue are answered accordingly.

Dictated and corrected by me.

BENUDHAR PATRA
3-05-2025
Presiding Officer
Industrial Tribunal, Bhubaneswar.

BENUDHAR PATRA
3-05-2025
Presiding Officer
Industrial Tribunal, Bhubaneswar.

[No.5454—LESI-IR-ID-0034-2025-LESI]

By order of the Governor
MADHUMITA NAYAK
Special Secretary to Government